

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Rick Cramer, individually and as personal)
representative of the Estate of David Burt)
Cramer and on behalf of David Burt Cramer,))

Plaintiff,))
vs.))

Soo Line Railroad Company, a Minnesota)
corporation d/b/a Canadian Pacific)
Railway, a wholly-owned subsidiary of)
Canadian Pacific Railway Limited, and)
Canadian Pacific Railway Company, a)
Canadian corporation,))

Defendants.)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Case No. 4:05-cv-094

Before the Court is the Defendants' "Motion to Dismiss" filed on March 7, 2006. The Defendants' motion is based on the Court's decision in another case arising out of the same train derailment, Mehl, et al. v. Canadian Pac. Ry. Ltd., 4:02-cv-009, in which the Court found the plaintiffs' claims were preempted by federal law and dismissed the case without prejudice. The Defendants have sought dismissal with prejudice.

The Plaintiff opposes the motion and respectfully disagrees with this Court's decision in the Mehl case. The Plaintiff contends his claims are not preempted by the Federal Railroad Safety Act ("FRSA") in that (1) the background and context of the statute does not support the broad preemption Defendants describe; (2) the narrow scope of FRSA preemption fails to cover some of Plaintiff's claims; and (3) where FRSA does preempt, the Plaintiff may bring an action for negligence based upon violation of the FRSA standard. The Plaintiff also asserts that if the Court

were to grant the motion to dismiss, the dismissal should be without prejudice in accordance with the Court's decision in Mehl.

The Plaintiff's complaint sets forth three claims: (1) negligence, (2) ultra hazardous activity, and (3) negligence per se. The Court has carefully reviewed the complaint and finds that the Plaintiff's claims are similar to those alleged in Mehl. As a result, the Court finds that the claims asserted by the Plaintiff must be dismissed for the same reasons set forth in the Court's decision in Mehl. The Court **GRANTS** the Defendants' motion to dismiss (Docket No. 15) and **ORDERS** that the case be dismissed without prejudice. The Court also **DENIES** as moot the Plaintiff's Motion to Continue Trial. (Docket No. 12).

Dated this 3rd day of April, 2006.



Daniel L. Hovland, Chief Judge
United States District Court